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§ 1000.36 How long must a recipient retain records regarding exceptions made to the conflict of interest provisions?

A recipient must maintain all such records for a period of at least 3 years after an exception is made.

§ 1000.38 What flood insurance requirements are applicable?

Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128), a recipient may not permit the use of Federal financial assistance for acquisition and construction purposes (including rehabilitation) in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the following conditions are met:

(a) The community in which the area is situated is participating in the National Flood Insurance Program in accord with section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106(a)), or less than a year has passed since FEMA notification regarding such flood hazards. For this purpose, the "community" is the governmental entity, such as an Indian tribe or authorized tribal organization, an Alaska Native village, or authorized Native organization, or a municipality or county, that has authority to adopt and enforce flood plain management regulations for the area; and

(b) Where the community is participating in the National Flood Insurance Program, flood insurance on the building is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012(a)); provided, that if the financial assistance is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan.

§ 1000.40 Do lead-based paint poisoning prevention requirements apply to affordable housing activities under NAHASDA?

Yes, lead-based paint requirements apply to housing activities assisted under NAHASDA. The applicable requirements for NAHASDA are HUD's

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regulations at part 35, subparts A, B, H, J, K, M and R of this title, which implement the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822-4846) and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856).

[64 FR 50230, Sept. 15, 1999; 65 FR 3387, Jan. 21, 2000]

EFFECTIVE DATE NOTES: 1. At 64 FR 50230, Sept. 15, 1999, § 1000.40 was revised, effective Sept. 15, 2000. For the convenience of the user, the superseded text is set forth as follows:

§ 1000.40 Do lead-based paint poisoning prevention requirements apply to affordable housing activities under NAHASDA?

Yes, lead-based paint requirements apply to housing activities assisted under NAHASDA. The applicable requirements for NAHASDA are:

(a) *Purpose and applicability.* (1) The purpose of this section is to implement section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822) by establishing procedures to eliminate as far as practicable the hazards of lead-based paint poisoning for rental and homeownership units owned or operated by a recipient. This section is issued under 24 CFR 35.24(b)(4). The requirements of subpart C of 24 CFR part 35 do not apply to the housing covered under this section. Other provisions of part 35 apply, including subpart H, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property.

(2) The requirements of this section do not apply to housing built after 1977, 0-bedroom units, units that are certified by a qualified inspector to be free of lead-based paint, or units designated exclusively for the elderly or the handicapped unless a child of less than six years of age resides or is expected to reside in the unit.

(3) Further information on identifying and reducing lead-based paint hazards can be found in the HUD publication, "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing."

(b) Definitions.

Chewable surface. Protruding painted surfaces that are readily accessible to children under six years of age; for example, protruding corners, window sills and frames, doors and frames, and other protruding woodwork. Hard metal surfaces are not considered chewable surfaces.

Component. An element of a residential structure identified by type and location, such as a bedroom wall, an exterior window sill, a baseboard in a living room, a kitchen floor, an interior window sill in a bathroom,

a porch floor, stair treads in a common stairwell, or an exterior wall.

Defective paint surface. A surface on which the paint is cracking, scaling, chipping, peeling, or loose.

Elevated blood lead level (EBL). Excessive absorption of lead. Excessive absorption is a confirmed concentration of lead in whole blood of 20 µg/dl (micrograms of lead per deciliter) or more for a single test or of 15-19 µg/dl in two consecutive tests 3-4 months apart.

HEPA means a high efficiency particle accumulator as used in lead abatement vacuum cleaners.

Lead-based paint. A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 milligram per centimeter squared (mg/cm²), or 0.5 percent by weight or 5000 parts per million by weight (PPM).

(c) **Requirements for pre-1978 units.** (1) If a dwelling unit was constructed before 1978, it must be visually inspected for defective paint surfaces. If defective paint surfaces are found, such surfaces must be treated in accordance with this section.

(2) Defective paint surfaces that are found in a report by a qualified lead-based paint inspector not to be lead-based paint, as defined in this section, may be exempted from treatment. For purposes of this section, a qualified lead-based paint inspector is a lead-based paint inspector certified, licensed or regulated by a State or Tribal government, the U.S. Environmental Protection Agency, a local health or housing agency, or an organization recognized by HUD.

(3) Treatment of defective paint surfaces required under this section must be completed within 30 calendar days of the visual evaluation. When weather conditions prevent treatment of the defective paint conditions on exterior surfaces within the 30 day period, treatment as required by this section may be delayed for a reasonable time.

(4) The requirements in this paragraph apply to:

(i) All painted interior surfaces within the unit (including ceilings but excluding furniture that is not built in or attached to the property);

(ii) The entrance and hallway providing ingress or egress to a unit in a multi-unit building, and other common areas that are readily accessible to children less than six years of age; and

(iii) Exterior surfaces that are readily accessible to children under six years of age (including walls, stairs, decks, porches, railings, windows and doors, and outbuildings such as garages and sheds that are readily accessible to children of less than six years of age).

(d) **Additional requirements for pre-1978 units with children under six with an EBL.** (1) In addition to the requirements of this section,

for a dwelling unit constructed before 1978 that is occupied by a family with a child under the age of six years with an identified EBL condition, chewable surfaces must be tested for lead-based paint. Testing is not required if previous testing of chewable surfaces is negative for lead-based paint or if the chewable surfaces have already been treated.

(2) Testing must be conducted by a qualified lead-based paint inspector, as explained in paragraph (c)(2) of this section. Lead content must be tested by using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples. Where lead-based paint on chewable surfaces is identified, treatment of the paint surface in accordance with this section is required, and treatment shall be completed within 30 days of the paint testing report.

(3) The requirements of paragraph (d) in this section apply to chewable surfaces:

(i) Within the unit;

(ii) The entrance and hallway providing access to a unit in a multi-unit building; and

(iii) Exterior surfaces (including walls, stairs, decks, porches, railings, windows and doors, and outbuildings such as garages and sheds that are accessible to children of less than six years of age).

(e) **Treatment of chewable surfaces without testing.** The recipient may, at its discretion, waive the testing requirement and require the owner to treat all interior and exterior chewable surfaces in accordance with the methods set out in this section.

(f) **Treatment methods and requirements.** Treatment of defective paint surfaces and chewable surfaces must consist of covering or removal of the paint in accordance with the following requirements:

(1) Surfaces must be covered with durable materials with joints and edges sealed and caulked as needed to prevent the escape of lead contaminated dust. The following are acceptable methods of treatment:

(i) Removal by wet scraping, wet sanding, chemical stripping on or off site;

(ii) Replacing painted components;

(iii) Scraping with infra-red or coil type heat gun with temperatures below 1100 degrees;

(iv) HEPA vacuum sanding;

(v) HEPA vacuum needle gun;

(vi) Contained hydroblasting or high pressure wash with HEPA vacuum; and

(vii) Abrasive sandblasting with HEPA vacuum.

(2) Prohibited methods of removal are: open flame burning or torching; machine sanding or grinding without a HEPA exhaust; uncontained hydroblasting or high pressure wash; and dry scraping except around electrical outlets or except when treating defective paint spots no more than two square feet in any one interior room or space (hallway, pantry, etc.) or totaling no

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more than 20 square feet on exterior surfaces.

(3) During exterior treatment soil and playground equipment must be protected from contamination.

(4) All treatment procedures must be concluded with a thorough cleaning of all surfaces in the room or area of treatment to remove fine dust particles. Cleanup must be accomplished by wet washing surfaces with a lead solubilizing detergent such as trisodium phosphate or an equivalent solution. Dust clearance testing by a qualified inspector may be done at the discretion of the recipient to ensure that the unit has been cleaned adequately.

(5) Waste and debris must be disposed of in accordance with all applicable Federal, tribal, state and local laws.

(g) *Tenant protection.* The owner must take appropriate action to protect residents and their belongings from hazards associated with treatment procedures. Residents must not enter spaces undergoing treatment until cleanup is completed. Personal belongings that are in work areas must be relocated or otherwise protected from contamination.

2. At 65 FR 3387, Jan. 21, 2000, §1000.40 was amended by correcting the second sentence, effective Sept. 15, 2000. For the convenience of the user, the superseded text is set forth as follows:

§ 1000.40 Do lead-based paint poisoning prevention requirements apply to affordable housing activities under NAHASDA?

* * * The applicable requirements for NAHASDA are HUD's regulations at part 35, subparts A, B, H, J, K, M and R of this title, which implement the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822-4846) and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856).

§ 1000.42 Are the requirements of section 3 of the Housing and Urban Development Act of 1968 applicable?

(a) *General.* Yes. Recipients shall comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and HUD's implementing regulations in 24 CFR part 135, to the maximum extent feasible and consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 3 provides job training, employment, and contracting opportunities for low-income individuals.

(b) *Threshold requirement.* The requirements of section 3 apply only to those section 3 covered projects or ac-

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tivities for which the amount of assistance exceeds \$200,000.

§ 1000.44 What prohibitions on the use of debarred, suspended or ineligible contractors apply?

In addition to any tribal requirements, the prohibitions in 24 CFR part 24 on the use of debarred, suspended or ineligible contractors apply.

§ 1000.46 Do drug-free workplace requirements apply?

Yes. In addition to any tribal requirements, the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*) and HUD's implementing regulations in 24 CFR part 24 apply.

§ 1000.48 Are Indian preference requirements applicable to IHBG activities?

(a) *Applicability.* Grants under this part are subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) provides that any contract, subcontract, grant or subgrant pursuant to an act authorizing grants to Indian organizations or for the benefit of Indians shall require that, to the greatest extent feasible:

(1) Preference and opportunities for training and employment shall be given to Indians, and

(2) Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452).

(b) *Definitions.*

(1) The Indian Self-Determination and Education Assistance Act defines "Indian" to mean a person who is a member of an Indian tribe and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community including any Alaska Native village or regional or village corporation as defined or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(2) In section 3 of the Indian Financing Act of 1974 "economic enterprise"